

STILLMAN LEGAL PC
42 Broadway, 12th Floor
New York, New York 10004
www.FightForUrRights.com
212-203-2417
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jose Figueroa Rodriguez, *individually and on*)
behalf of all other employees similarly situated)
)
Plaintiff,)

-v-

LA SELVA BAR AND RESTAURANT INC.)
(DBA RESTAURANTE LA SELVA),)
MARIBEL BRITO, and RICAR LOPEZ)
jointly and severally.)

Defendants.

FIRST AMENDED COMPLAINT
FLSA COLLECTIVE ACTION
COMPLAINT

COLLECTIVE ACTION

UNDER 29 U.S.C. § 216(b)

NATURE OF THE ACTION

1. Plaintiff JOSE FIGUEROA RODRIGUEZ bring this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et. seq.* in order to remedy Defendants' wrongful withholding of his lawfully earned wages compensation. Plaintiff also brings these claims under New York Labor Law ("NYLL"), Article 6, §§ 190 *et. seq.*, as well as the supporting New York State Department of Labor Regulations for violations of minimum wage compensation requirements, and failure of Defendants to comply with notice and record-keeping requirements. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL. Defendants' conduct extended beyond the Plaintiff to all other similarly situated employees.

1 Plaintiff seeks certification of this action as a collective action on behalf of themselves individually
2 and those other similarly situated employees and former employees of Defendants pursuant to 29
3 U.S.C. § 216(b).

4 SUMMARY

5 2. Plaintiff RODRIGUEZ was employed by Defendants, LA SELVA BAR AND
6 RESTAURANT INC. (DBA RESTAURANTE LA SELVA), MARIBEL BRITO and RICHAR
7 LOPEZ (collectively “Defendants”), as a dishwasher and food preparer and sometimes made
8 deliveries.
9

10 3. Plaintiff RODRIGUEZ as has worked with Defendants from June 2018 until
11 April 4, 2020.
12

13 4. Throughout the course of his employment, Plaintiff worked approximately seventy
14 (70) hours per week.

15 5. As a result of Defendants’ actions, of not paying at least minimum wage Plaintiff
16 has suffered great hardship and damages.
17

18 JURISDICTION AND VENUE

19 Federal Question Jurisdiction and Supplemental Jurisdiction

20 6. This Court has original subject matter jurisdiction over this action under 28 U.S.C.
21 § 1331 because the civil action herein arises under the laws of the United States, namely, the Fair
22 Labor Standards Act and 29 U.S.C. §201 *et seq.* Additionally, this Court also has supplemental
23 jurisdiction over Plaintiff’s state law claims under 28 U.S.C. §1367(a)
24

25 Personal Jurisdiction

26 7. This Court may properly maintain personal jurisdiction over Defendants under Rule
27 4 of the Federal Rules of Civil Procedure because Defendants’ contacts with this state and this
28

1 judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply with
 2 traditional notions of fair play and substantial justice.

3 4 **Venue**

5 8. Venue is proper in the Eastern District of New York under 28 U.S.C. §§ 1391 (b)
 6 (1) and (2) because Defendants reside and conduct business in this judicial district and because a
 7 substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this
 8 judicial district.
 9

10 **Corporate Defendant**

11 9. LA SELVA BAR AND RESTAURANT INC. is a domestic professional
 12 corporation formed in 2019 and is an organized and existing corporation under the laws of the
 13 State of New York.
 14

15 10. LA SELVA BAR AND RESTAURANT INC. owns and operates
 16 RESTAURANTE LA SELVA located on 94-02 80th street, Ozone Park, New York 11416.

17 11. At all relevant times, LA SELVA BAR AND RESTAURANT INC. was a covered
 18 employer within the meaning of the FLSA, 29 U.S.C. § 203(d), the NYLL § 190, the N.Y.
 19 Executive Law § 292(5), and the N.Y. Admin. Code. § 8-102(5).
 20

21 12. At all relevant times, LA SELVA BAR AND RESTAURANT INC. maintained
 22 control, oversight, and direction over the Plaintiff, including timekeeping, payroll and other
 23 employment practices that applied to him.
 24

25 **INDIVIDUAL DEFENDANTS**

26 **RICHAR LOPEZ**

27 1. Upon information and belief, at all relevant times throughout Plaintiff's employment,
 28

1 RICHAR LOPEZ was an authorized operator, manager, and agent of the Corporate Defendant.

2 2. At all relevant times throughout Plaintiff's employment, Individual Defendant and
3 Corporate Defendant were joint employers of the Plaintiff, acted in the interest of each other
4 with respect to employees, and had common policies and practices as to wages and hours,
5 pursuant to 29 CFR § 791.2.

6
7 3. At all relevant times throughout Plaintiffs' employment, Individual Defendant had
8 the discretionary power to create and enforce personnel decisions on behalf of the Corporate
9 Defendant, including but not limited to: hiring and terminating employees; setting and
10 authorizing issuance of wages; maintaining employee records; setting Plaintiff's and other
11 employees' schedule; negotiating Plaintiff's rate of pay; instructing, supervising and training
12 Plaintiff; and otherwise controlling the terms and conditions for the Plaintiff while she was
13 employed by Defendants.

14
15 4. At all relevant times throughout Plaintiff's employment, Individual Defendant was
16 actively involved in the day-to-day operations of Corporate Defendant.

17
18 5. At all relevant times throughout Plaintiff's employment, Individual Defendant was
19 a "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
20 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
21 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
22 296(6), and N.Y. Admin. Code § 8-107(6).

23
24 6. Upon information and belief, at all relevant times throughout Plaintiff's employment,
25 was one of the owners, authorized operators, managers, and agent of the Corporate Defendant.

26 7. At all relevant times throughout Plaintiff's employment, Individual Defendant and
27 Corporate Defendant were joint employers of the Plaintiff, acted in the interest of each other
28

1 with respect to employees, and had common policies and practices as to wages and hours,
2 pursuant to 29 CFR § 791.2.

3 8. At all relevant times throughout Plaintiff's employment, Individual Defendant had
4 the discretionary power to create and enforce personnel decisions on behalf of the Corporate
5 Defendant, including but not limited to: hiring and terminating employees; setting and
6 authorizing issuance of wages; maintaining employee records; setting Plaintiff's and other
7 employees' schedule; negotiating Plaintiff's rate of pay; instructing, supervising and training
8 Plaintiff; and otherwise controlling the terms and conditions for the Plaintiff while she was
9 employed by Defendants.
10

11 9. At all relevant times throughout Plaintiff's employment, Individual Defendant was
12 actively involved in the day-to-day operations of Corporate Defendant.
13

14 10. At all relevant times throughout Plaintiff's employment, Individual Defendant was
15 a "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
16 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
17 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
18 296(6), and N.Y. Admin. Code § 8-107(6).
19

20
21 **MARIBEL BRITO**

22 11. Upon information and belief, at all relevant times throughout Plaintiff's employment,
23 MARIBEL BRITO was the owner, authorized operator, manager, and agent of the Corporate
24 Defendant.
25

26 12. At all relevant times throughout Plaintiff's employment, Individual Defendant and
27 Corporate Defendant were joint employers of the Plaintiff, acted in the interest of each other
28

1 with respect to employees, and had common policies and practices as to wages and hours,
2 pursuant to 29 CFR § 791.2.

3 13. At all relevant times throughout Plaintiffs' employment, Individual Defendant had
4 the discretionary power to create and enforce personnel decisions on behalf of the Corporate
5 Defendant, including but not limited to: hiring and terminating employees; setting and
6 authorizing issuance of wages; maintaining employee records; setting Plaintiff's and other
7 employees' schedule; negotiating Plaintiff's rate of pay; instructing, supervising and training
8 Plaintiff; and otherwise controlling the terms and conditions for the Plaintiff while she was
9 employed by Defendants.
10

11 14. At all relevant times throughout Plaintiff's employment, Individual Defendant was
12 actively involved in the day-to-day operations of Corporate Defendant.
13

14 15. At all relevant times throughout Plaintiff's employment, Individual Defendant was
15 a "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
16 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
17 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
18 296(6), and N.Y. Admin. Code § 8-107(6).
19

20 16. Upon information and belief, at all relevant times throughout Plaintiff's employment,
21 was one of the owners, authorized operators, managers, and agent of the Corporate Defendant.
22

23 17. At all relevant times throughout Plaintiff's employment, Individual Defendant and
24 Corporate Defendant were joint employers of the Plaintiff, acted in the interest of each other
25 with respect to employees, and had common policies and practices as to wages and hours,
26 pursuant to 29 CFR § 791.2.

27 18. At all relevant times throughout Plaintiff's employment, Individual Defendant had
28

1 the discretionary power to create and enforce personnel decisions on behalf of the Corporate
 2 Defendant, including but not limited to: hiring and terminating employees; setting and
 3 authorizing issuance of wages; maintaining employee records; setting Plaintiff's and other
 4 employees' schedule; negotiating Plaintiff's rate of pay; instructing, supervising and training
 5 Plaintiff; and otherwise controlling the terms and conditions for the Plaintiff while she was
 6 employed by Defendants.
 7

8 19. At all relevant times throughout Plaintiff's employment, Individual Defendant was
 9 actively involved in the day-to-day operations of Corporate Defendant.

10 20. At all relevant times throughout Plaintiff's employment, Individual Defendant was
 11 a "covered employer" within the meaning of the FLSA, the NYLL, the HRL, and the NYCHRL,
 12 and employed or jointly employed Plaintiff, and is personally liable for the unpaid wages and
 13 other damages sought herein, pursuant to 29 U.S.C. § 203(d), NYLL § 2, N.Y. Executive Law §
 14 296(6), and N.Y. Admin. Code § 8-107(6).
 15

16 CORPORATE DEFENDANT

17 21. LA SELVA BAR AND RESTAURANT INC. (hereinafter "Defendant Corporation")
 18 is a domestic business corporation organized and existing under the laws of the state of New
 19 York.
 20

21 22. LA SELVA BAR AND RESTAURANT INC. owns and operates RESTAURANTE
 22 LA SELVA located on 94-02 80th street, Ozone Park, New York 11416.
 23

24 23. At all relevant times, RESTAURANTE LA SELVA employed more than 10
 25 employees at all times.

26 24. At all relevant times, Defendant Corporation maintained control, oversight, and
 27 direction over the Plaintiff, including timekeeping, payroll, and other employment practices that
 28

1 applied to them.

2 25. At all relevant times, Defendant Corporation was an employer engaged in interstate
3 commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29
4 U.S.C. §§ 206(a) and 207(a) and employed Plaintiff within the meaning of the FLSA.

5 26. At all relevant times, Plaintiff was employed by Defendant Corporation within the
6 meaning of the NYLL §§ 2 and 651.
7

8 **FACTUAL ALLEGATIONS**

9 **PLAINTIFF JOSE FIGUEROA RODRIGUEZ**

10 27. Plaintiff Rodriguez was employed by Defendants from on or about June 2018 until
11 the August 4, 2020. He averaged (70) seventy hours per week, beginning work at 9:00 AM and
12 ending around 8:00 PM. Plaintiff was paid \$10.00 per hour, for all his hours worked.
13

14 28. Throughout his employment, Plaintiff was mainly a dishwasher and food preparer
15 and sometimes made deliveries. He washed all of the restaurants dishes and when he was not
16 washing dishes, he was cooking meals for the restaurant's patrons.
17

18 29. Plaintiff was never paid a lawful minimum wage nor was he paid overtime.

19 30. Throughout the duration of his employment, Plaintiff did not have any supervisory
20 authority, nor did he exercise discretion or independent judgment with respect to matters of
21 significance.
22

23 31. Plaintiff Rodriguez never had the authority to hire or fire employees do payroll or set
24 employees' work hours. That level of work was left to the Individual Defendants.
25

26 **Defendants' Unlawful Corporate Practices**

27 32. Defendants required Plaintiff to work and never compensated him for his work at the
28

1 lawful minimum wage rate.

2 33. Plaintiff was never provided with any wage statements, time sheets, or other
3 documents showing the number of hours he worked every week.

4 34. Plaintiff was not provided with a wage notice at the time of hire or at any point
5 thereafter.

6 35. Upon information and belief, while Defendants employed Plaintiff, they failed to
7 post notices explaining the minimum wage rights of employees under the FLSA and NYLL and
8 failed to inform Plaintiff of such rights.

9 36. Defendants willfully disregarded and purposefully evaded record-keeping
10 requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets
11 and payroll records.

12 37. Plaintiff was never provided with a wage notice at the time of hire or at any point
13 thereafter, noting his hourly wage increases.

14 38. Upon information and belief, while Defendants employed Plaintiff, they failed to
15 post notices explaining the minimum wage rights of employees under the FLSA and NYLL and
16 failed to inform Plaintiff of such rights.

17 39. Plaintiff has personal knowledge of other employees of Defendants who are
18 similarly situated and who also worked hours for which they were not paid minimum and wages.

19
20 **COLLECTIVE ACTION ALLEGATIONS**

21 40. Pursuant to 29 U.S.C. §§ 203, 206, 207, and 216(b), Plaintiff brings his First and
22 Second causes of action as a collective action under the FLSA on behalf of themselves and the
23 following collective:

24 All persons employed by Defendants at any time from June 2018h to the present day (the
25
26
27
28

1 “Collective Action Period”) who worked as non-exempt employees of the Defendants (the
2 “Collective Action Members”).

3 41. A collective action appropriate in these circumstances because Plaintiff and the
4 Collective Action Members are similarly situated, in that they were all subject to Defendants’
5 illegal policies of failing to pay wages at or above the statutory minimum.
6

7 42. Plaintiff and the Collective Action Members have substantially similar job duties
8 and are paid pursuant to a similar, if not the same, payment structure.

9 43. The claims of the Plaintiff stated herein are similar to those of the other employees.
10

11 **FIRST CAUSE OF ACTION**

12 **Fair Labor Standards Act – Violation of Minimum Wage Requirements** 13 **(Brought on Behalf of Plaintiff and the Collective Action Members)**

14 44. Plaintiff, on behalf of themselves and the Collective Action Members, reallege and
15 incorporates by reference all allegations made in all preceding paragraphs as if fully set forth
16 herein.

17 45. Defendants, throughout the majority of their employment period, paid Plaintiff and
18 the Collective Action Members in amounts below the applicable statutory minimum wage for
19 their hours worked, in violation of the FLSA, 29 U.S.C. § 206.
20

21 46. Defendants’ unlawful conduct, as described in this Complaint, has been willful and
22 intentional. Defendants were aware, or should have been aware, that the practices described in
23 this Complaint were unlawful. Accordingly, a three-year statute of limitations applies pursuant
24 to 29 U.S.C. § 255(a).
25

26 47. As a result of the Defendants' violations of the FLSA, Plaintiff, and the Collective
27 Action Members have suffered damages by being denied wages at or exceeding the statutory
28 minimum in accordance with the FLSA in amounts to be determined at trial and are thus entitled

1 to recovery of such amounts, liquidated damages, attorneys' fees, costs, and other compensation
2 pursuant to 29 U.S.C. § 216 (b).

3 **SECOND CAUSE OF ACTION**

4 **New York Labor Law – Violation of Minimum Wage Requirements**

5 48. Plaintiff realleges and incorporates by reference all allegations in all preceding
6 paragraphs as if fully set forth herein.

7
8 49. Defendants, throughout the majority of Plaintiff's employment, paid Plaintiff less
9 than the applicable statutory minimum wage for his hours worked in violation of NYLL § 652
10 and the supporting New York State Department of Labor regulations, including 12 N.Y.C.R.R.
11 Part 146-1.2.

12
13 50. Defendants' failure to pay Plaintiff the minimum wage lacked a good faith basis
14 within the meaning of NYLL § 663.

15 51. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
16 Defendants her unpaid minimum wages, liquidated damages as provided for by the NYLL,
17 reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest, pursuant to NYLL
18 § 198 (1-a).

19 **THIRD CAUSE OF ACTION**

20 **(Violation of the Overtime Provisions of the NYLL and FLSA)**

21 49) Plaintiff repeats and realleges all paragraphs above as though fully set forth herein.

22
23 50) Defendants, in violation of the FLSA, failed to pay Plaintiff (and the FLSA class
24 members) overtime compensation at rates of one and one-half times the regular rate of pay for
25 each hour worked in excess of forty hours in a workweek, in violation of 29 U.S.C. § 207 (a)(1).

26
27 51) Defendants' failure to pay Plaintiff (and the FLSA class members) overtime
28

1 compensation was willful within the meaning of 29 U.S.C. § 255(a)

2 52) Plaintiff (and the FLSA class members) were damaged in an amount to be determined
3 at trial.

4 **THIRD CAUSE OF ACTION**

5 **New York Labor Law – Failure to Provide Accurate Wage Statements**

6 52. Plaintiff realleges and incorporates by reference all allegations in all preceding
7 paragraphs.

8 53. Defendants have failed to provide Plaintiff with complete and accurate wage
9 statements throughout their employment listing, *inter alia*, all regular hours of work, her rate of
10 pay, and the basis of pay, in violation of NYLL § 195(3).
11

12 54. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
13 Defendants' statutory damages of Two Hundred and Fifty dollars (\$250) per workday that the
14 violation occurred, up to a maximum of Five Thousand Dollars (\$5,000), pursuant to NYLL §
15 198 (1-d).
16

17 **FOURTH CAUSE OF ACTION**

18 **New York Labor Law – Failure to Provide Notice at Time of Hiring**

19 55. Plaintiff realleges and incorporates by reference all allegations in all preceding
20 paragraphs.
21

22 56. Defendants failed to provide Plaintiff at the time of hiring or at any point thereafter,
23 a notice containing the rate of pay and basis thereof, whether paid by the hour, shift, day, week,
24 salary, piece, commission, or other; the regular pay day designated by the employer; the physical
25 address of the employer's main office or principal place of business; the telephone number of the
26 employer, and anything otherwise required by law, in violation of NYLL § 195(1).
27
28

57. Due to Defendants' violations of the NYLL § 195(1), Plaintiff is entitled to recover from Defendants statutory damages of Fifty dollars (\$50) per workday that the violation occurred, up to a maximum of Five Thousand Dollars (\$5,000) pursuant to NYLL § 198 (1-b). -judgment interest, damages for emotional distress, attorney's fees, costs, and other such damages of an amount to be determined at trial, pursuant to N.Y. Executive Law § 297(9).

58. Individual Defendants are jointly and severally liable for the aforementioned damages, since he incited, compelled and coerced the above discriminatory and unlawful conduct pursuant to N.Y. Executive Law § 296(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

A. Issuance of a declaratory judgment that the practices complained of in this complaint are unlawful under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New York Labor Law, Article 19, §§ 650 *et seq.*, and supporting New York State Department of Labor Regulations, the New York Executive Law § 296, and the N.Y. Administrative Code. §§ 8–107;

B. Unpaid minimum wages pay under the FLSA and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and the supporting United States Department of Labor Regulations;

C. Unpaid minimum wages under NYLL, and an additional and equal amount as liquidated damages pursuant to NYLL §198(1-a) and § 663(1);

D. An award of statutory damages for Defendants' failure to provide Plaintiff with a wage notice at the time of hiring, or at any point thereafter, pursuant to NYLL § 198 (1-b);

E. An award of statutory damages for Defendants' failure to provide Plaintiff with wage statements, pursuant to NYLL § 198 (1-d);

1 F. An award of back wages, front wages, liquidated damages, damages for
2 emotional distress, and punitive damages for the Defendants' prohibited retaliation against
3 Plaintiff pursuant to 29 U.S.C. § 215(3);

4 G. An award of front pay, lost compensation, damages for emotional distress,
5 punitive damages, and liquidated damages up to a maximum of Twenty Thousand Dollars
6 (\$20,000.00), for Defendants' prohibited retaliation against Plaintiff pursuant to NYLL §
7 215(2)(a);

9 H. A civil penalty of a maximum of Ten Thousand Dollars (\$10,000.00) for
10 Defendants' prohibited retaliation against Plaintiff pursuant to 29 NYLL § 215(1)(b);

11 I. A permanent injunction requiring Defendants to pay all statutorily required wages
12 pursuant to the FLSA and NYLL;

14 J. An award of back wages, front wages, pre-judgment interest, damages for
15 emotional distress, and punitive damages for Defendants' discrimination and sexual harassment
16 against Plaintiff, pursuant to N.Y. Admin. Code § 8-502(a);

18 K. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b) are not awarded, an
19 award of prejudgment interest pursuant to 28 U.S.C. § 1961;

20 L. An award of pre-judgment interest of nine per cent per annum (9%) pursuant to
21 the New York Civil Practice Law and Rules §§ 5001-5004;

22 M. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the New
23 York Civil Practice Law and Rules § 5003;

25 N. An award of attorney's fees, costs, and further expenses up to Fifty Dollars
26 (\$50.00), pursuant to 29 U.S.C. § 216(b), NYLL §§ 198 and 663(1), N.Y. Admin. Code § 8-
27 502(g); and
28

O. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
September 18, 2020

STILLMAN LEGAL PC

By: /s/_____
Lina Stillman
Attorneys for Plaintiff
42 Broadway, 12th Floor
New York, New York 10004
Tel: 212.203.2417|
LS@StillmanLegalPC.com